

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.338 of 2011

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RAM UDGAR CHAUDHARY S/O Sri Fudar Chaudhary Resident Of Village
Pastan Navtoly, Police Station Andharathari, District Madhubani.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The Principal Secretary, Human Resources Development Department,
Government Of Bihar, Patna.
3. The Director, Primary Education, Human Resources Development
Department, Government Of Bihar, Patna
4. The District Magistrate, Madhubani.
5. The District Superintendent Of Education Cum District Programme
Coordinator, Madhubani.
6. The Sub Divisional Magistrate, Jhanjharpur, District Madhubani.
7. The Block Development Officer, Andharathari Bliock District Madhubani.
8. The Block Education Extention Officer, Andharathari Block, District
Madhubani.
9. The Mukhiya, Marukiya Gram Panchayat, Andharathari Block, District
Madhubani.
10. The Panchayat Secretary, Marukiya Gram Panchayat, Andharathari Block,
District Madhubani.
11. Sat Nam Kanu S/O Sri Ram Deo Sah Resident Of Village Pastan, Police
Station Andharathari, District Madhubani.
12. Member District Teacher Employment Appellate Tribunal Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Jha No.3
For the State	:	Mr. Shiv Kumar, AC to GA 3
For Respondent No. 11	:	Mr. Sanjeev Kumar Jha Mr. Jayant Anand

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 02-04-2024

The present writ application has been filed for quashing
the order, dated 08.09.2010, passed by the District Appellate



Authority, Madhubani, in Appeal Case No. 112/05/2010, by which the order, dated 05.06.2007, passed by the Block Education Extension Officer, Andhrathari, has been quashed and a direction was issued to reinstate the respondent no. 11.

2. The further prayer of the petitioner is to direct the concerned respondent not to disturb the peaceful functioning of the petitioner as Block Teacher, in the Upgraded Middle School, Murukiya, Andhrathari.

3. The brief facts of the case is that the petitioner as well as respondent no. 11 had applied for appointment on the post of Panchayat Shiksha Mitra (in short, the 'P.S.M.') in the year 2005, under Extremely Backward Class category, in the Gram Panchayati Raj Murukiya, Andhrathari block, in the district of Madhubani.

4. Altogether 13 posts were advertised in the said Gram Panchayat. As per roster, six posts were earmarked for male, out of which three posts were meant for unreserved male, and one post each for Backward Class category, Extremely Backward Class category and Scheduled caste category. The rest seven posts were earmarked for female candidates. The present dispute pertains to one post of Extremely Backward Class category only.



5. After scrutiny, the Sukh Suvidha Samiti prepared the merit list of the candidates applied for the post of P.S.M. under Extremely Backward Class category, on 24.05.2005, wherein the petitioner was placed at serial no. 8 and the name of respondent no. 11 figured at serial no. 9. The weightage of both, the petitioner as well as the respondent no. 11, was same, i.e. 15.

6. On the basis of merit list, the petitioner was selected as P.S.M., vide letter no. 2, dated 24.05.2005 and was posted in the Upgraded Middle School, Murukiya, where the petitioner submitted his joining on 25.05.2005. The contract of the petitioner as P.S.M. was renewed after completion of eleven months, vide letter no. 7, dated 11.05.2006. It is also not in dispute that after coming into force of the Bihar Panchayat Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as 'the 2006 Rules'), the petitioner was absorbed as Panchayat Teacher.

7. The respondent no. 11 raised objection regarding appointment of the petitioner before the Block Development Officer, Andhrathari and also submitted application before the Janata Darbar of the District Magistrate, Madhubani, regarding malicious conduct of the Mukhiya and Panchayat Secretary of Gram Panchayati Raj Murukiya in appointing the petitioner.



8. The Sub Divisional Magistrate, Jhanjharpur, in the light of the direction issued by the District Magistrate, Madhubani, conducted an enquiry regarding the illegality committed in the appointment process of the P.S.Ms. in various Gram Panchayats, in Andhrathari block, including the Murukiya Gram Panchayat and upon enquiry, he has come to conclusion that the claim of respondent no. 11 is true that the petitioner, having lesser marks, has illegally been appointed on the post of P.S.M. The enquiry report was forwarded to the District Magistrate, Madhubani, vide letter no. VI-I/05-436, dated 28.06.2005.

9. On 09.09.2005, the Block Education Extension Officer, Andhrathari, issued a direction to the Panchayat Secretary of Murukiya Gram Panchayat to appoint respondent no. 11 within a week after cancelling the appointment of the petitioner. When no decision was taken by the Panchayat Secretary upon the direction issued by the Block Education Extension Officer, Andhrathari, the respondent no. 11 filed a complaint before the District Superintendent of Education, Madhubani, upon which the District Superintendent of Education, Madhubani, vide letter no. 2231, dated 11.09.2006, directed the Mukhiya and the Panchayat Secretary of Murukiya Gram Panchayat to take necessary action in this regard within a week.



10. In the light of the aforesaid direction, the Mukhiya and the Panchayat Secretary of Murukiya Gram Panchayat, vide letter no. 2, dated 16.10.2006, asked the Headmaster of the Upgraded Middle School, Murukiya, to cancel the appointment of the petitioner and to appoint the respondent no. 11 in his place. According to the respondent no. 11, he joined pursuant thereto in the Upgraded Middle School, Murukiya, on 19.10.2006.

11. Thereafter, the petitioner made representation before the District Superintendent of Education, Madhubani, for enquiry into the matter and take necessary action.

12. At this stage, the Block Education Extension Officer, Andhrathari, vide letter no. 581, dated 05.06.2007, issued a letter to the Headmaster, Upgraded Middle School, Murukiya, stating that in the light of the departmental notification, dated 01.07.2006, and the departmental letter no. 1899, dated 10.11.2006, no person can be appointed as P.S.M. after 01.07.2006. As such, in the light of the above, since respondent no. 11 was appointed on the post of P.S.M. on 16.10.2006, his appointment is against the departmental notification and the departmental letter. Accordingly, the direction was to dispense with the services of the respondent no. 11 immediately.



13. In the light of the above direction, the respondent no. 11 was removed, vide letter, dated 08.06.2007. Aggrieved by the removal/termination, the respondent no. 11 filed a writ application before this Court, bearing CWJC No. 7795 of 2007, which was disposed vide order, dated 25.11.2009, with liberty to respondent no. 11 to file an appeal before the concerned District Appellate Authority.

14. The respondent no. 11 preferred an appeal before the District Appellate Authority, Madhubani, bearing Appeal Case No. 112/05/2010, which was allowed vide order, dated 08.09.2010 and a direction was issued to reinstate the respondent no. 11. Admittedly, the petitioner was not made party in the appeal preferred by the respondent no. 11 before the District Appellate Authority, Madhubani

15. Learned Counsel for the petitioner submits that since both, the petitioner as well as the respondent no. 11, were having equal weightage marks, i.e. 15, the petitioner, having higher qualification of B.A. Part II, was appointed as P.S.M. by the Sukh Suvidha Samiti, as per rules.

16. The letter, dated 16.10.2006, issued by the Mukhiya and the Panchayat Secretary of Murukiya Gram Panchayat, asking the Headmaster of Upgraded Middle School, Murukiya, to cancel



the appointment of the petitioner and to appoint respondent no. 11 in his place is wholly illegal because after coming into force of the 2006 rules, with effect from 01.07.2006, no person can be appointed or no such direction can be issued for appointment as P.S.M.

17. The District Appellate Authority, Madhubani, has passed the impugned order, dated 08.09.2010, behind the back of the petitioner and without giving opportunity of hearing to him. The petitioner was not made a party in the appeal preferred by the respondent no. 11 before the District Appellate Authority, Madhubani, as such, the impugned order is in blatant violation of principles of natural justice.

18. Learned Counsel relies upon a decision of this Court, in the case of **Alok Kumar and Others v. the State of Bihar and Others**, reported in **2009 (2) PLJR 929**.

19. On the other hand, learned Counsel for the State argues that being aggrieved by his non-selection, the respondent no. 11 made a complaint before the District Magistrate, Madhubani, whereupon after enquiry conducted by the Sub Divisional Magistrate, Jhanjharpur, the appointment of the petitioner as P.S.M. was found invalid and illegal and in view of the said enquiry report, the concerned Gram Panchayat was



directed to cancel the appointment of the petitioner and to appoint respondent no. 11 in his place, but somehow or the other, the appointment of respondent no. 11 was delayed and he was appointed only on 16.10.2006.

20. Since respondent no. 11 was appointed after 01.07.2006, i.e. after coming into force of the 2006 Rules with effect from 01.07.2006, the Block Education Extension Officer, Andhrathari, vide letter, dated 05.07.2007, directed the Headmaster of the upgraded Middle School, Murukiya, to cancel the appointment of respondent no. 11.

21. Learned Counsel for the respondent no. 11 submits that the direction for appointment of respondent no. 11 as P.S.M. was issued, vide letter no. 69, dated 09.09.2005, but it was only due to the malicious conduct of the Mukhiya and the Panchayat Secretary of Murukiya Gram Panchayat that the appointment was finally made vide letter no. 2, dated 16.10.2006. He further submits that the respondent no. 11 belongs to Extremely Backward Class category and in this regard, proper certificate has been issued by the District Magistrate, Madhubani, vide Certificate No. 840, dated 28.09.2001. He next submits that since the petitioner was not a necessary party in Appeal Case No. 112/05/2010 filed



before the District Appellate Authority, Madhubani, therefore, he was not impleaded as a party in that appeal.

22. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

23. The facts are not in dispute to a larger extent and admittedly the petitioner was appointed on the recommendation of the Sukh Suvidha Samiti, as P.S.M. on 24.05.2005. The Block Education Extension Officer, Andhrathari, vide letter no. 69, dated 09.09.2005, had issued a direction to the Panchayat Secretary of Murukiya Gram Panchayat to appoint respondent no. 11 within a week after cancelling the appointment of the petitioner, but the said letter was not acted upon and on the contrary, the contract of the petitioner was renewed as P.S.M. after completion of eleven months by the employment unit, vide letter no. 7, dated 11.05.2006.

24. It appears that the Mukhiya and the Panchayat Secretary of Murukiya Gram Panchayat, vide letter no. 2, dated 16.10.2006, after coming into force of the 2006 Rules, directed the Headmaster of Upgraded Middle School, Murukiya, to cancel the appointment of the petitioner and to appoint respondent no. 11 in his place. Thereafter, the Block Education Extension Officer,



Andhrathari, vide letter no. 581, dated 05.06.2007, directed the Headmaster, Upgraded Middle School, Murukiya, dispense with the services of the respondent no. 11 immediately in the light of the departmental notification, dated 01.07.2006, and the departmental letter no. 1899, dated 10.11.2006. as he was appointed on 16.10.2006 in violation of the department notification, dated 01.07.2006 and the departmental letter, dated 10.11.2006, by which no person can be appointed as P.S.M. after 01.07.2006.

25. The respondent no. 11 is claiming his right for appointment as P.S.M. or his non-continuance as P.S.M. The facts of the case reflects that the petitioner was appointed as P.S.M. in the year 2005 itself, received honorarium, his contract was renewed also and was subsequently absorbed as Panchayat Teacher after coming into force of the 2006 Rules with effect from 01.07.2006.

26. The contention of the respondent no. 11 is not acceptable for the reason that the post of P.S.M. stood abolished after coming into force of the 2006 Rules with effect from 01.07.2006, whereunder no person can be appointed, claim appointment, deemed appointment as P.S.M. retrospectively, as held by a Division Bench of this Court, in the case of **Smt. Renu**



Kumari Pandey and Others v. The State of Bihar and Others,
reported in **2011 (4) PLJR 297 (DB).**

27. The Division Bench decision, in the case of **Smt. Renu Kumari Pandey** (supra), has been affirmed by a Full Bench of this Court, in the case of **Kalpana Rani v. The State of Bihar,** reported in **2014 (2) PLJR 665**, wherein, it has been held in paragraph 118 as follows:

“118. Having thus given my anxious consideration, I am of the view that after 1.7.2006, no person, who was earlier an Patna High Court LPA No.1569 of 2010 dt. 15-05-2014 aspirant for the post of Panchayat Shiksha Mitra, can be appointed only because his or her name figured in the panel of Panchayat Shiksha Mitra. The post of Panchayat Shiksha Mitra has been abolished with effect from 01.07.2006 and after abolition of the post, no one can be appointed on the post of Panchayat Teacher on the basis of his mere empanelment of Panchayat Shiksha Mitra. The view taken in the judgment of the Division Bench in the case of Smt. Renu Kumari Pandey (supra) is a good law. I will have no hesitation in holding that the earlier Division Bench judgment in the case of Kishori Prasad (supra), for the reasons indicated above, has not correctly decided the law and is, accordingly, overruled.”



28. In the present case, admittedly, the respondent no. 11 was not appointed and worked as P.S.M. as on 01.07.2006, i.e. at the time of conversion of P.S.M. as Panchayat Teacher. Applying the principle laid down by the Full Bench of this Court, it is difficult to hold that merely because respondent no. 11 was having higher marks, in the intermediate examination, and was not appointed/joined as P.S.M., prior to 01.07.2006, he is entitled to be appointed as Panchayat Teacher on the basis of his having higher marks in the intermediate examination after conversion of P.S.M. as Panchayat Teacher. The Full Bench decision, in the case of **Kalpana Rani** (supra), fully applies in the facts of the present case and in view of the law laid down thereunder, it is difficult for this Court to hold that the respondent no. 11 is entitled to be appointed as Panchayat Teacher in place of the petitioner.

29. The respondent no. 11 is not entitled to claim employment/deemed employment as P.S.M. or has right to be absorbed in service as Panchayat Teacher as per Rule 20 (iii) of the 2006 Rules.

30. The impugned order, dated 08.09.2010, passed by the District Appellate Authority, Madhubani, is also not tenable on the ground of order having been passed in violation of principles of natural justice inasmuch as the order directing the reinstatement



of respondent no. 11 in place of the petitioner was passed behind the back of the petitioner as he was not made a party respondent before the District Appellate Authority, Madhubani, in Appeal Case No. 112/05/2010.

31. In the result, the order, dated 08.09.2010, passed by the District Appellate Authority, Madhubani, in Appeal Case No. 112/05/2010, is hereby set aside.

32. This writ application is allowed.

33. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	18-03-2024
Uploading Date	02-04-2024
Transmission Date	N/A

